

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ERICK BRANDON MOORE,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CIV-07-496-M
)	
JOHN WHETSEL, Sheriff, et al.,)	
)	
Defendants.)	

REPORT AND RECOMMENDATION

Plaintiff, a prisoner appearing *pro se*, brings this action pursuant to 42 U.S.C. § 1983, alleging a violation of his constitutional rights. United States District Judge Vicki Miles-LaGrange has referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B). For the reasons set forth herein, the undersigned recommends that the complaint be dismissed without prejudice, due to Plaintiff's failure to pay the filing fee.

By order of this Court dated May 7, 2007, Plaintiff was required to pay an initial partial filing fee in the amount of \$15.67 on or before May 28, 2007. Plaintiff was advised that failure to pay the initial partial filing fee or show cause in writing for his failure to do so, could result in dismissal of this action without prejudice to refiling.

A review of the court file reveals that Plaintiff has not paid the initial partial filing fee. Therefore the undersigned recommends that this action be dismissed without prejudice. Local Civil Rule 3.4(b); Cosby v. Meadors, 351 F.3d 1324, 1326-33 (10th Cir. 2003) (upholding dismissal of civil rights complaint based on noncompliance with orders requiring installments on the filing fee or to show cause for the failure to pay).

RECOMMENDATION

Accordingly, because Plaintiff has neither paid the partial filing fee as ordered by this court nor shown good cause for such failure, it is recommended that this action be dismissed without prejudice to refiling.¹ Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by June 20, 2007, in accordance with 28 U.S.C. §636 and Local Civil Rule 72.1. Plaintiff is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal issues contained herein. Moore v. United States, 950 F.2d 656 (10th Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 31st day of May, 2007.



DOYLE W. ARGO
UNITED STATES MAGISTRATE JUDGE

¹It is noted that the order of May 7, 2007 has been returned labeled "RETURN TO SENDER NOT AT THIS ADDRESS." However, Plaintiff has not advised this court of any change of address as required by LCvR 5.5.